U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26964963

Date: JUL. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an international legal consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for the EB-2 classification either as a member of the professions holding an advanced degree or as an individual of exceptional ability. The Director also concluded 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 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. 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.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions.[1] *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

We will first address the threshold requirement that the Petitioner must qualify for classification under Section 203(b)(2)(B)(i) of the Act, as a member of the professions holding an advanced degree or as an individual of exceptional ability.

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

Regarding the Petitioner's eligibility as an advanced degree professional, the Director focused on the expert opinion written by [redacted] an associate teaching professor of law at [redacted] University, and concluded that this expert letter did not sufficiently evaluate the Petitioner's educational background to establish that the Petitioner has a foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(2). However, upon reviewing the record, it appears that this letter was intended to evaluate the Petitioner's eligibility for the national interest waiver under the *Dhanasar*'s three prongs, not his academic credentials.

The record contains a diploma of the Petitioner's bachelor's degree in law from the [redacted] University [redacted] in Brazil and an official academic transcript listing legal courses he has taken from 1992 to 1997. On appeal, the Petitioner offers an academic evaluation from [redacted] of Silvergate Evaluations demonstrating that his degree is equivalent of a U.S. bachelor's degree in legal studies. In addition, the Petitioner resubmits an affidavit stating that he has been self-employed at his own companies, [redacted] since 2003 and [redacted] (his solo firm) since 2016. The Petitioner's other supporting documents, such as his resume, recommendation letters, company registration certificates, and evidence of his lawyering, corroborate the details provided in this affidavit.

Considering the evidence in totality, we conclude the Petitioner has established, more likely than not, that he possessed the foreign degree equivalent of a bachelor's degree, and at least five years of progressive post-baccalaureate experience in the specialty at the time of filing of the petition. We find therefore that the Petitioner is eligible for the EB-2 classification as an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(3)(i) and withdraw the Director's finding in this matter.

As the Petitioner met the EB-2 classification as an advanced degree professional, we need not evaluate whether the Petitioner also meets the eligibility for an individual of exceptional ability and reserve our opinion regarding this issue. *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").

We now turn to the Petitioner's eligibility for the national interest waiver under *Dhanasar*. The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of the *Dhanasar* framework.[3] The Director stated that the record does not demonstrate how the Petitioner's proposed endeavor as an international legal consultant stands to have a broader impact on his field or would offer substantial economic benefits to the region where it operates or to the nation. We agree with the Director's decision.

The Petitioner initially described his proposed endeavor as providing consultation services to both American and Brazilian companies "in the areas of labor, civil and environmental law of Brazil, focusing on environmental issues and connecting companies both in Brazil and in the United States to join forces in solving this ever growing important issue." The Petitioner claimed that his endeavor is of national importance because his company, [redacted] "will provide significant impact in the betterment of the Environment, create new job opportunities, by providing solutions for companies and individuals working hard to restore, maintain and save the environment."

[3] The Director also found that the Petitioner did not meet the second or third prongs of the *Dhanasar* analytical framework.

In response to the Director's request for evidence (RFE), the Petitioner describes his proposed endeavor as follows:

> My proposed endeavor is to create the [redacted] to provide consultancy and legal advice to Brazilian and American individuals/companies to introduce themselves into foreign territory in a structured, and therefore, competitive manner. My company will provide various services such as: international business consulting, international business strategy, international market entry, international implementation recruitment and training consulting, business formation and business strategies for corporate organization, management and strategic consulting.

Unlike the initial description of his proposed endeavor which concentrated on the legal matters of labor, civil, and environmental laws, the Petitioner's latter description involves business strategies, marketing, recruitment, and business formation. Because a petitioner seeking a national interest waiver must, under the first prong of the *Dhanasar* framework, demonstrate the substantial merit and national importance of their proposed endeavor, a change in the nature of that endeavor from legal consulting to business consulting is material to eligibility for the waiver.

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). Since it appears the new endeavor raised in response to the RFE is a material change to the Petitioner's initial proposed endeavor, we will not consider it in this appeal. We will then evaluate the evidence for the endeavor the Petitioner submitted with the initial petition.

In determining whether the proposed endeavor has national importance, "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.* at 890. The Petitioner's primary evidence for establishing national importance of his endeavor consists of the industry reports, his business plan, and the expert opinion letter from [redacted] of the [redacted] University. Upon examination of each piece of evidence, we conclude that the record is not sufficient in linking the Petitioner's claims of national importance to his proposed endeavor, as discussed below.

The Petitioner refers to web-based reports and statistics showing the consulting industry's potential for growth in the United States and emphasizes the importance of commercial and trade relations between Brazil and the United States. While these reports bring awareness to issues relevant to international legal consulting and highlight the field in which the Petitioner intends to work, they do not discuss the impact of the Petitioner's consulting services on his clients or to the consulting industry or establish how the specific proposed endeavor has national importance. The relevant question here is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

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.* The Petitioner has submitted the same business plan several times throughout the proceedings. Each time, the Petitioner claims that his

consulting company has significant potential to employ U.S. workers as it intends to hire both direct and indirect employees. Yet the Petitioner's business plan does not include detailed projections for staff hiring to demonstrate that the benefits to the regional or national economy resulting from his business would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* The business plan simply indicates that the company's office in [redacted] Florida, can accommodate only 10 professionals and in two years, the company may expand to having 15 full time professionals "comprised of employees and possible business partners."

The business plan's three-year projection further estimates the company's income tax to the U.S. government during the first year to be $16,175 but the amount increases to $93,035 in year two and $179,199 in year three. The plan also anticipates the company's revenue to be $372,480 in year one, $585,220 in year two, and $832,560 in year three. However, the record does not sufficiently detail the basis for its revenue and tax projections or adequately support how these projections will be realized. The Petitioner must support his assertions raised in his business plan with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner also suggests that his endeavor serves an economically depressed area because "12.8% of the population in [redacted] FL, live below the poverty line, a figure that is higher than the national average of 12.3%." The Petitioner states that "I am aware that I must cooperate with these communities, and I hope, in the mature phase of my business, to be able to offer my services at affordable prices in order to be one of the promoters of development in these areas." However, the Petitioner does not offer any corroborating documentation to show how this area qualifies as an economically depressed area that would benefit from his business or how his consulting company specifically intends to serve this area.

The Petitioner resubmits the expert opinion letter from [redacted] on appeal. The letter opines that the Petitioner's extensive knowledge of business laws and regulations in Brazil will somehow "improve operations and achieve better productivity and profitability levels" for U.S. small and medium-sized enterprises. Yet the letter lacks specific examples as to how the Petitioner can make such substantial economic impact to his field as a lone consulting company. The letter further claims that the Petitioner's endeavor will generate revenues and create employment opportunities, which in turn increasing "tax revenues to the federal and state governments and increasing the funds available to spend on hospitals, schools, roads, and other essential services" without indicating any projected U.S. economic impact or job creation specifically attributable to the Petitioner's services or company. Here, the expert opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

With the appeal, the Petitioner declares that "I qualify as an Entrepreneur" based on USCIS' updated guidance from January 21, 2022. *See generally* 6 USCIS Policy Manual F.5(D)(4), http://www.uscis.gov/policy-manual. However, the policy update that the Petitioner references explains how the *Dhanasar* framework can apply to entrepreneurs and does not automatically grant national interest waiver or attach national importance to any and all entrepreneurial endeavors. As such, we conclude that the Petitioner's reference to this policy update does not sufficiently identify an error in Director's decision nor establish the national importance of the proposed endeavor.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because the effects of his/her work are primarily limited to his/her school or district, we find that the Petitioner has not established his proposed endeavor in this case will sufficiently extend beyond his clients to affect the regional or national economy more broadly. *See Dhanasar*, 26 I&N Dec. at 889.

Based on the reasons above, we find the record does not establish the Petitioner's proposed work is of national importance. Because the Petitioner has not met the first prong of the *Dhanasar*'s analytical framework, we decline to reach whether he meets the remainder of the second and third prongs under the *Dhanasar* framework. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. *See Bagamasbad*, 429 U.S. at 25; *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 he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.