U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26961293

Date: JULY 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. *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 Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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. 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.

While 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, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan "to work as a [f]inancial [s]pecialist for U.S. institutions, assisting companies from various sectors within this broad area." The Petitioner also asserted that he "will continue to train managers and other financial employees below me to pass onto them the skills I have developed, and the experience I have gained." The Petitioner further stated, "Since 2018, I am a [s]elf-[e]mployed [f]inancial [s]pecialist, subcontracted by [redacted]." The Petitioner did not initially state that the proposed endeavor would entail founding his own financial services consulting company or hiring employees to work for him.

In response to the Director's request for evidence (RFE), the Petitioner stated, for the first time, that the proposed endeavor would entail "developing his [f]inancial, [a]ccounting, and [t]ax services company, [redacted] in the state of Florida." The Petitioner further stated in response to the RFE that he "will serve as the company's [c]hief [e]xecutive [o]fficer and [s]ales [m]anager" and that he "will hire several qualified U.S. professionals . . . in various departments." The Petitioner also submitted a business plan for his startup financial services company in response to the RFE. The business plan is dated October 2022, after the petition filing date. We note, however, that publicly available information indicates that the Petitioner's startup financial services company first incorporated in Florida in [redacted] 2020, before the petition filing date. *See generally* State of Florida, Division of Corporations, *Search for Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks by Name*, https://search.sunbiz.org/Inquiry/CorporationSearch/ByName. The record does not reconcile why the Petitioner omitted any reference at the time of filing to the proposed endeavor entailing "developing his [f]inancial, [a]ccounting, and [t]ax services company" that he had already incorporated at that time.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *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).

Whether the Petitioner would continue working as a subcontracted, self-employed financial specialist or found a new financial services company and both work as a chief executive officer and hire other employees to work at that new financial services company is material because it addresses the scope of the proposed endeavor and whether it may have substantial positive economic effects. *See Dhanasar*, 26 I&N Dec. at 889-90. Because, at the time of filing, the Petitioner omitted any reference to founding his own financial services company, working as his own company's chief executive officer, and hiring other employees to work at that new financial services company, his assertions in response to the RFE regarding his new startup company present a new set of facts that purport to materially change the petition and, thus, cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 15 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Because the business plan submitted in response to the RFE and the Petitioner's related assertions regarding founding that company and working as its chief executive officer cannot establish eligibility, we need not address that information further.

The Director noted that the Petitioner's RFE response improperly "switch[ed] his proposed endeavor," constituting a "material change to the [P]etitioner's intent," citing *Matter of Izummi*, 22 I&N Dec. 169. The Director concluded that the record does not establish that the proposed endeavor has national importance. The Director further concluded that the record does not satisfy the second and third *Dhanasar* prongs, as required. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner summarizes his academic and prior employment history and he asserts that his proposed endeavor has national importance because "his professional activities relate to a matter of national importance and impact, particularly because they generate substantial ripple effects upon key commercial and business activities on behalf of the United States—namely, serving the business functions and finances of U.S. companies." The Petitioner also references generalized publications regarding financial management. Additionally, the Petitioner discusses the business plan he submitted in response to the Director's RFE.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's reliance on appeal on his academic and prior employment history is misplaced. Although an individual's academic and prior employment history are material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—they are immaterial to the first *Dhanasar* prong—whether the prospective endeavor has both substantial merit and national importance. *See id.* at 888-91.

In turn, the Petitioner's focus on appeal on generalized publications regarding the field of financial management is misplaced. As noted above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to

assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. None of the articles referenced on appeal specifically identify the Petitioner and his proposed endeavor, nor do they articulate how the specific endeavor may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We note again that the Petitioner's emphasis on appeal on the business plan he submitted for the first time in response to the Director's RFE is misplaced because it presents a new set of facts that cannot establish eligibility; thus, we need not address the substance of those assertions further. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 15 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Turning to the Petitioner's endeavor as established at the time of filing, the proposal to continue working as a self-employed financial specialist subcontractor appears to benefit the companies that contracted and subcontracted with him, respectively, and other potential clients to whom he may have provided his services. However, the record does not establish how working as a self-employed financial specialist subcontractor may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90. Relatedly, the record does not establish how the proposed endeavor of "train[ing] managers and other financial employees" at an unspecified company or companies may have national or even global implications within a particular field, broader implications, or other substantial positive economic effects. *See id.* Because the record does not establish how the Petitioner's endeavor, as established at the time of filing, may have national or even global implications within a particular field, broader implications, or other substantial positive economic effects, it does not establish the proposed endeavor has national importance. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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"); *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.