U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27441918

Date: JUL. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a health and safety engineer in the field of occupational health and safety management, seeks employment-based second preference (EB-2) immigrant 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 record did not establish that the Petitioner qualifies for a national interest waiver. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id.* While neither the 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 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.[2]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

The record initially included a statement in which the Petitioner described his endeavor as follows:

> My plan in the United States is to continue my career by working as a Safety Engineer for an American company or department in the area of occupational health and safety management. There, I can develop and enforce safety compliance standards and help companies comply with workplace health and safety regulations. In addition, I can provide indispensable guidance regarding large-scale projects involving construction processes, safety and accident prevention practices. I can review plans and specifications for new machinery and equipment for safety compliance. I can also conduct workplace inspections, identify and correct potential hazards as well as direct the installation of safety devices.... My specific endeavor will potentially impact the U.S in the following ways:
>
> - Fill a position as a Safety Engineer that is vacant due to the high demand for them in the field;
> - Develop and enhance workplace health and safety standards, policies and practices;
> - Recommend changes to workplace processes to enhance the safety of workers;
> - Advise management on latest trends and updates in workplace health and safety standards;
> - Enforce and ensure compliance with any occupational health and safety regulations;

[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).
[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

- Reduce workplace accidents that injure workers, put the environment at risk, and cause property damage;
- Increase U.S. job creation, retention and tax revenue;
- Contribute to the U.S. GDP.

In response to a request for evidence (RFE), the Petitioner submitted a cover letter emphasizing his qualifications as an engineer. The letter also provides the following:

> [The Petitioner] has first-hand knowledge of the commercial markets in the U.S. and Brazil. This presents substantial merit to the U.S. because of the ripple effects it generates upon commercial activities, the business industry, foreign direct investments, and, ultimately, the U.S. economy.... [I]t is important to note that [the Petitioner] is developing a business in the United States, through which he will leverage his business development and marketing knowledge to spur significant economic benefits for the country.

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 "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 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 economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

Although the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director concluded that the record did not establish that the endeavor is of national importance. While the record contained letters of support discussing the Petitioner's qualifications and issues related to the Petitioner's field, they did not provide insight or otherwise clarify the Petitioner's endeavor or contain objective evidence to demonstrate the endeavor's national importance. Similarly, while the record contained industry reports and articles discussing globalization, employee retention, business operational innovations, immigrant entrepreneurship, and the benefits of international investment, these informational documents did not speak specifically to the Petitioner's endeavor or establish how the Petitioner's individual business would influence the field more broadly at a level commensurate with national importance.

The Director also noted the apparent change in the Petitioner's endeavor from that of an engineer seeking employment with an organization to an entrepreneur operating his own company; the RFE response showed that the Petitioner intended to start his own business in [redacted] Florida, as a consultant in the field of occupational health and safety. The Director determined that the record did not establish that any economic benefits from the Petitioner's endeavor would extend beyond his business's immediate clientele to have a substantial positive impact on the U.S. economy, nor did the

record establish that the Petitioner's work would have broader implications in the industry. The Director concluded and that the Petitioner had not demonstrated the national importance of his endeavor.

On appeal, the Petitioner asserts that USCIS "erroneously denied" the petition and "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." The Petitioner, however, does not specify how the Director erred or what factors in the decision were erroneous.[3] The Petitioner also contends, without further explanation, that the Director applied a stricter standard of proof than that of preponderance of the evidence[4] and disregarded the evidence submitted. The Petitioner provides a brief which states the following concerning his business:

> [The] company…will specialize in providing high-quality professional occupational health and safety consulting, services, and training. These essential health and safety services and consulting will allow U.S. businesses to meet the procedures established by the Occupational Safety and Health Administration (OSHA) in the U.S. market. The Appellant's company is set to impact the Occupational Health and Safety Management industry…[and] is ready to boost local economies, specifically in the underserved business zones, of several states across the United States. This has the potential to attract investments and expand throughout the United States in the following years…. [The company] will make a stand and impact, generating jobs for the U.S. workers, and helping the local community bring investments to the region.

For the reasons provided below, we agree with the Director that the Petitioner has not demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner's initial description of his proposed endeavor did not indicate plans to form a company; the Petitioner initially intended to provide services as the direct employee of a "company or department." In response to the RFE, the Petitioner submitted a business plan that describes his proposed endeavor through his company's intended services:

> [The company] will provide a set of comprehensive services designed to save lives, foster job generation, and reduce time lost with work-related injuries. This package will ultimately benefit the US' most precious asset: the people and their families…. [The company] will offer a portfolio of services contemplating safety consultancy, implementation, and training. The firm will focus on the construction industry first and then will expand to the railroad businesses. [The Petitioner] plans to bring a clear approach to address themes such as the use of Personal Protective Equipment (PPE), noise control, ergonomics, and other procedures, including the ones approved and requested by…OSHA.

On appeal, the Petitioner's brief includes the following description of his proposed endeavor:

---

[3] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

[4] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

> Business development and sales professionals, such as the Appellant, are key to companies' financial stability—they are responsible for ensuring companies stay afloat, and they primarily do this by aligning the business strategy with sales, pricing, and marketing tactics that resonate with consumers, including the overall market economy.... Due to their direct interaction with customers, business developers, and salespeople are also uniquely positioned to feed market-based intelligence back into the business, which can then be used to help improve services, products, or relevant business processes.

The brief goes on to further explain the Petitioner's intended work:

> As outlined in the evidence provided, the Appellant will create value for U.S. organizations. He will do this through improved performance, achieved by providing objective advice regarding the optimization of business processes using respected industry methodologies, as well as implementing effective business development, sales, and marketing techniques. This, in turn, will allow U.S. companies to maintain successful business methodologies, which adequately address industry changes, all while making U.S. companies more resilient to economic downturns—which they will be better equipped to deal with. All the more, the Appellant's proposed endeavor of optimizing business functions for U.S. companies will also directly impact the domestic job market, as improved industry patterns culminate in higher business demands and an increase in the creation of new jobs and workforce dependability.

In addition to the fact that the RFE response includes a description of the Petitioner's proposed endeavor that differs significantly from the endeavor outlined in the initial filing materials, the endeavor described in the appeal brief appears to differ from the endeavor described in the response to the RFE. Though the brief initially references the Petitioner's experience as an engineer, it goes on to identify the Petitioner as one of a multitude of "business developers and sales professionals" that drive the success of U.S. companies. The brief portrays the Petitioner's intended endeavor with terms like "sales expansion," "market strategies," and "profitable markets." The brief characterizes the Petitioner's role as follows:

> The role of a business development professional is to serve as a conduit between the business and its various markets. Effective sales teams will not only communicate and sell the value of a firm's products to targeted customers, but they will also continuously collect, synthesize, and disseminate the critical market intelligence that will help the firm innovate, define, and redefine the business strategy. Business development professionals are inherently best equipped to help prevent the failure of a startup or new small business.

The record appears to currently contain three proposed endeavors in various stages of development. The evidence of record initially depicted the Petitioner's endeavor as providing his health and safety expertise to a single employer. The RFE response pivoted the endeavor to one involving an entrepreneurial venture to operate a consultancy. Presently, the appeal brief presents in vague and general terms the Petitioner's endeavor to provide business growth and marketing strategies to unknown entities. We conclude that both the RFE response and the appeal brief presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries

seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *See also Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to establish a company were presented after the filing date; as such, the amended endeavor cannot retroactively establish eligibility. Further, the appeal brief provides a confusing overview of the Petitioner's intended work role and, as such, yet another deviation from the Petitioner's initial proposed endeavor. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). The Petitioner has not provided a definitive and consistent description of the Petitioner's proposed endeavor that would allow for a meaningful analysis of whether that endeavor is one of substantial merit and/or national importance. For these reasons, the petition may not be approved.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not demonstrated that he has proposed an endeavor of substantial merit or national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.