U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27415535

Date: JULY 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an actuary, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate his eligibility for the requested 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner proposes to establish an insurance consulting services business in the United States having previously worked as an actuary in Brazil.

The Petitioner provided his academic diplomas and transcripts to demonstrate qualification for the underlying EB-2 visa classification as an advanced degree professional. The record indicates the Petitioner earned an Executive MBA in insurance from [redacted] Instituto [redacted] in Brazil; an MBA in actuarial and finance management from Universidade [redacted] in Brazil; and a bachelor of actuarial science from [redacted] Universidade [redacted] in Brazil. The Director did not make a determination whether the Petitioner established his eligibility for the underlying EB-2 classification. Upon de novo review, we find that the Petitioner has demonstrated being a member of the professions holding an advanced degree based on the equivalency of his foreign degrees being above that of a U.S. bachelor's degree.

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[3]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

A. Proposed Endeavor's Substantial Merit

The Petitioner initially submitted a professional plan and statement with his Form I-140 petition indicating that he proposed to continue working as an actuarial consultant by starting an insurance

[2] 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).

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

consulting services business. In a reply to a request for evidence, he submitted a business plan further describing his proposed new business, [redacted] for which he would be its chief executive officer and actuarial consultant. The business plan states that the business would provide the following consulting services: insurance risk assessment and brokerage support; construction project risk analysis and brokerage support; private companies collective risk health insurance portfolio project covering COVID-19; and private companies insurance grid portfolio review and assistance development. The business would have its main office in [redacted] Florida and another office in [redacted] New York with a focus of providing insurance consulting services to new businesses and small business association companies. We agree with the Director that the Petitioner's endeavor has substantial merit.

For the first time, on appeal, the Petitioner raises in his Counsel's letter a new proposed endeavor, "working for any company or individual in need of his services." The appeal also reiterates the Petitioner's initial proposed endeavor stating, "It also involves working towards the promotion and development of his own company in the [United States]." The Petitioner raising for the first time on appeal the possibility of working for a company constitutes a materially different endeavor and changes the focus of the Petitioner's endeavor from what he indicated in his petition. The Petitioner did not acknowledge or explain this material change. The Petitioner's plan to work for a company or individual will not be considered in this decision, and we limit our decision to the proposed endeavor stated in the Petitioner's initial petition, establishing an insurance consulting services business and being its chief executive officer and actuarial consultant.[4]

B. Proposed Endeavor's National Importance

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish "that the proposed endeavors(s) will have potential prospective impact, such as evidence that the endeavor will have broader implications, or national or global implications within a particular field. Therefore the [P]etitioner has not established that the proposed endeavor is of national importance." The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's business plan, his statement, and industry reports and articles. Upon de novo review, we find the Petitioner did not demonstrate that his endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here,

[4] USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to the 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). The Petitioner cannot materially change the proposed endeavor after submitting his petition. 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.

the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

On appeal, the Petitioner's stresses his more than 25 years "of progressive experience and acumen in the business and finance fields" and his educational credentials to argue that his "work offers broad implications to the [U.S.] business and finance industries, specifically through his endeavors within key commercial segments." The Petitioner argues his proposed endeavor "will benefit the [United States] by creating jobs and economic stability." He relies on his background to emphasize that he "has brought numerous advantages to the companies that he has served . . ." by stimulating "his served companies' economic capacities" and prioritizing "customer satisfaction by ensuring all projects are aligned with customer's actual needs, furthering customer loyalty." The Petitioner argues "the [United States] would benefit from investing in well-versed business professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. companies in regions that are economically and politically strategic, yet extremely complex." He contends his advice to "corporations about potential opportunities for business development and economic growth" would "have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the national and contributing to a streamlined economic landscape." The Petitioner asserts his "proposed endeavor is clearly of national importance, when considering how much a professional with his caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification."

However, the Petitioner's reliance on his academic credentials, achievements, and professional experience to establish the national importance of his proposed endeavor is misplaced. His academic credentials, achievements, and professional experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar 's first prong. 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. See id. at 889.

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. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the U.S. business industries and the field of insurance, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's insurance consulting services would impact the insurance field more broadly.

With the petition, the Petitioner submitted a statement contending his proposed endeavor has national importance based on the potential economic benefits asserted in the appeal. However, the Petitioner has not provided corroborating evidence, aside from claims in his statements and his business plan, that his business's activities stand to provide substantial economic benefits to the United States. The Petitioner's claims that his insurance consulting services business will benefit the U.S. economy with his contributions to the business and finance industries being "concrete and substantial" has not been established through independent and objective evidence. The Petitioner's statements are not sufficient

to demonstrate his endeavor has the potential to provide economic benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that his proposed job duties as the chief executive officer and actuarial consultant for his business would impact the insurance industry more broadly rather than benefiting his consulting business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner submitted a business plan, which explains: his intended ownership and financial investment in the business; establishment of two offices in underutilized business areas in [redacted] Florida and [redacted] New York; the business's products and services and an analysis of the demand for these insurance products and services; and the business's proposed marketing, staffing, and financial forecasts. The business plan briefly indicates that it proposes to establish the business in underutilized business zones, claiming this will generate jobs for U.S. workers in these underutilized areas, will improve the wages and working conditions for U.S. workers, and will help the local communities by bringing "investments to the region and economic development." However, while the business plan provides a descriptions of the proposed consulting business, its establishment in underutilized areas of Florida and New York, an extensive analysis of the insurance industry market for the insurance products and services to be provided by the business, and the Petitioner's experience, it does not document the potential prospective impact, including the asserted economic benefits to the United States.

The business plan projects that in five years the consulting business will hire 25 direct employees which will generate wages of 2.47 million dollars, create 84 indirect jobs, pay over three hundred thousand dollars in federal taxes, and generate over four hundred thousand dollars in commercial rent income to the local communities. The record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized.

The Petitioner also has not provided corroborating evidence, aside from claims in his business plan, that his business's future staffing levels and business activities stand to provide substantial economic benefits to underutilized areas of Florida, New York, and the United States. While the Petitioner expresses his desire to contribute to the United States and its underutilized areas, he has not established with specific, probative evidence that his endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in an economically underutilized area. The Petitioner must support his assertions with relevant, probative, and credible evidence. See id. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 25 direct jobs and 84 indirect jobs, and paying wages of 1.84 million dollars, federal taxes of over three hundred thousand dollars, and commercial rent of over four hundred thousand dollars over a five-year period rises to the level of national importance.

The Petitioner further claims on appeal that the national importance of his proposed endeavor is evidenced in insurance industry reports and articles. The reports and articles relate to financial managers, investments in capital, how the stock market affects the U.S. economy, the financial services industry, United States' economic benefits of international trade and foreign direct

investments, retail banking, economies of the richest countries in the world, worker growth and shortages, and immigrants' positive effects on U.S. businesses and entrepreneurship.

We recognize the importance of the insurance industry and related careers, the significant contributions from immigrants who have become successful entrepreneurs, and the positive effects foreign investment can have in U.S. businesses; however, merely working in the insurance field or starting an insurance consulting business is insufficient to establish the national importance of the proposed endeavor. 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 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. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

We further note the record includes an expert opinion from [redacted] professor of finance at [redacted] University, which includes an analysis of the national importance of the Petitioner's proposed endeavor. The opinion states, "[The Petitioner] would work in the United States in an area of substantial merit and national importance." The opinion explains the expected growth of job opportunities for actuaries in the insurance industry. However, the opinion's focus on the need for actuaries and how the Petitioner's professional experience makes him well positioned to help the insurance industry with his professional skills, does demonstrate that the Petitioner's specific endeavor having a prospective impact in her field. The opinion does not focus on the Petitioner's specific endeavor and it having a potential prospective impact on the U.S. economy, or in the field of insurance. Simply stating that his work would support an important industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The opinion also explains that companies doing or planning to do business abroad would benefit from the Petitioner's expertise since he has "an intimate and first-hand knowledge of the Brazilian financial arena." However, the record does not demonstrate that the Petitioner's proposed endeavor includes collaborative works between U.S. companies and Brazilian companies, or that he is actively targeting U.S. companies that do business, or plan to do business in Brazil. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm'r 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R-, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). The content of the opinion is lacking relevance because it discusses how the Petitioner's expertise would be beneficial to U.S. companies doing business in Brazil; instead of addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the Dhanasar framework.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level

commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the chief executive officer and actuarial consultant of his proposed insurance consulting business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claimed depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business's insurance consulting work and the claimed economic results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. 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 find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.