U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27463405

Date: JUN. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an advanced degree professional. 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. The Director found the Petitioner qualified as an advanced degree professional. But the Director concluded that he did not demonstrate that the requested waiver is in the national interest.

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 affirm the Director's finding that the Petitioner did not demonstrate the "national importance" of his proposed U.S. employment. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate their qualifications for the underlying immigrant visa category, either as an advanced degree professional or 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 protections for U.S. workers is in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." But 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 normal job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The Petitioner has shown his eligibility for the EB-2 classification under 8 C.F.R. § 204.5(k)(3)(i)(B). The remaining issue to be determined 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.

As a preliminary matter, the Petitioner alleges on appeal that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, to [his] detriment." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe, 25 I&N Dec. at 375; see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965).* Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See 1 USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts on appeal that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

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. Although the Petitioner's statements reflect his intention to provide valuable automotive parts and services to his customers, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner proposes to pursue his endeavor through work as a general operations manager for his own U.S. company [D-], which he and his spouse formed in [redacted] 2021. The company would import auto parts to the United States from Asia and South America and provide "brick and mortar and online auto parts retail and services customized by customer service. . ." To further illustrate the nature of his proposed endeavor, he provided evidence, including a business plan for D-, recommendation letters, and documentation regarding the economic benefits of marketing, business management, entrepreneurship, immigrant labor and investment. In denying the petition, the Director concluded

that the Petitioner had not demonstrated the national importance of his particular proposed endeavor. The Director explained that the Petitioner's evidence did not show that his proposed work through the operation and management of his auto parts business would have broader implications at a level indicative of national importance.

We conclude the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The business plan states that D- is to commence operations in 2022 and forecasts that D- will generate revenues exceeding $900,000 in its first year of operation, which will steadily climb each year to reach revenues of over $2,765,000 by the end of its fifth year of operation. The Petitioner estimates his business will create at least 37 jobs within this five-year timeframe. However, the plan does not sufficiently detail the basis for the revenue and staffing projections, nor does he adequately explain how the revenue and staffing projections will be realized. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. at 376.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his company's future staffing levels would provide substantial economic benefits in Virginia and Tennessee (where its stores are to be located), or to the United States, generally. While the Petitioner asserts that D- will hire 37 U.S. employees within five years, he has not offered sufficient evidence that the area where the will company operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

For instance, the Petitioner indicates that he will locate his stores in [redacted], VA and [redacted], TN, asserting that these locations qualify as Small Business Administration (SBA) Hub Zones. The HUBZone program provides preferential contracting consideration to businesses in "historically underutilized business zones," including economically depressed areas, qualified disaster areas, and areas where military installations were recently closed. *See* https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program; 13 C.F.R. § 126. However, the record does not include evidence indicating that D- is actually located in a HUBZone or will employ workers from a HUBZone or other economically depressed area.

Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

We also acknowledge the various documents the Petitioner provided regarding the importance of his industry and occupation. In his appeal brief, the Petitioner avers that "professionals such as [the Petitioner] are an essential component of the U.S. economic market; they accurately represent American values. . . ." He also asserts that his proposed work "will translate into profitable business and commercial tendencies, which [will] in turn contribute to the national economy and the domestic job market.

However, when determining whether a proposed endeavor would have substantial merit or national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889-890. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.")

On appeal, the Petitioner points to his professional statement, among other things, asserting that the evidence "extensively describes his credentials, expertise, professional accomplishments, and allows concrete projections of the benefits he may offer the United States." While the record contains evidence regarding the Petitioner's education, work experience and skills, this documentation is relevant to the second *Dhanasar* prong regarding whether he is well-positioned to advance the proposed endeavor. It does not speak to whether his endeavor, in and of itself, would have substantial merit or national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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 met the requisite first prong of the *Dhanasar* analytical framework. As such, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.