U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28015518

Date: AUG. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer, seeks classification as an individual of exceptional ability in the sciences, arts or business. *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. 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 the 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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, 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:

[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).

- 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 Director made no determination as to whether the Petitioner qualifies as an individual of exceptional ability. Instead, the decision only addressed the Petitioner's eligibility for a national interest waiver. Therefore, the issue for consideration 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner held a number of positions in Brazil between 1986 and 2018, when he entered the United States as the F-2 spouse of an F-1 nonimmigrant student. In addition to practicing law, the Petitioner worked as "the Managing Partner at . . . a passenger road transport company"; "the Partner in charge of the workforce" at a company that provided cargo shipping support services; a "Partner of . . . a venue rental company"; and founder of a "consulting service" company. After arriving in the United States in 2018, he served as the "Treasurer and Partner of . . . a glass and façade cleaning company in Florida" in 2018 and 2019.[2]

The description of the Petitioner's proposed endeavor has not been fully consistent in this proceeding. On the petition form, the Petitioner indicated that he seeks employment as a lawyer. A statement submitted with the petition indicates that the Petitioner "intends to advance his career as a Lawyer Specialized in Judicial Recovery, as well as develop, implement and advise using his extensive handling of judicial recovery. [The Petitioner] will make his services available to small and large companies in the private and public sector in the United States." The Petitioner's résumé details his involvement with "Business bankruptcy restructuring" in Brazil, representing both debtors and creditors.

In a request for evidence (RFE), the Director asked for more details about the Petitioner's proposed endeavor. In response, the Petitioner stated that he "will establish a company focused on business consultancy, optimizing clients' operations, and aiding the recovery of small and medium-sized companies on the brink of bankruptcy." The Petitioner submitted a business plan for this company, and stated that the new company will employ "lawyers, accountants, company administrators, and marketers" to "analyze the clients' existing business operations, identify problem areas of improvement, devise and improvement plan, and help clients implement the plan."

The Petitioner stated that his "proposed endeavor has not changed. . . . The Business Plan presented in response to the Service's RFE did not annul or modify [the Petitioner's] proposed endeavor." But the business plan emphasizes "management consulting" rather than a legal practice, which had been the initial focus of the petition. The "Industry and Market Analysis" section of the business plan discusses "Management Consulting" rather than the practice of law, and the "Services" section of the

[2] As an F-2 nonimmigrant, the Petitioner was not authorized to work in the United States. *See* 8 C.F.R. § 214.2(f)(15)(i).

business plan indicates that the company will provide "Administrative Consultancy" and "Administrative Assistance."

The business plan refers to the Petitioner as the company's "principal legal consultant," and its discussion of the Petitioner's intended duties indicates that the Petitioner "will perform executive duties" and "provide any necessary training." It does not specify that he would practice law.

The company described in the business plan has some relation to the Petitioner's initial description of the proposed endeavor, because it concerns helping companies to navigate bankruptcy proceedings or avoid them altogether, but it is not the same thing that the Petitioner originally described.

The Petitioner's statement in response to the RFE also discusses an entirely new element of the proposed endeavor, involving advice to companies seeking to trade with Latin America, especially Brazil. The Petitioner stated that "his multicultural legal knowledge . . . will most definitely assist U.S. companies and investors by mastering compliance requirements across multiple jurisdictions and target markets, explicitly those which they find challenging, such as Latin America." The business plan does not mention international trade at all, and neither did the Petitioner's original description of his proposed endeavor.

The shift in emphasis from law to management consulting and the new assertions about cross-border trade both represent significant changes to the proposed endeavor as initially described. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

A. Substantial Merit and National Importance

The first *Dhanasar* 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director's discussion of the proposed endeavor's substantial merit is limited to the observation that the Petitioner submitted a letter from an "Associate Professor of Marketing [at] [redacted] University, who opines that the petitioner satisfies the Dhanasar analytical framework." The Director stated that "the letter does not exempt the petitioner from establishing eligibility with independent, documentary evidence." But the Director did not state any determination as to whether the proposed endeavor has substantial merit.

The denial decision is incomplete, because the Director did not make determinations about substantial merit or the Petitioner's eligibility for the underlying EB-2 classification. These omissions, however, do not prevent us from making a decision on the merits of the petition, because the Director did make a decision on the national importance of the proposed endeavor. That decision, by itself, is sufficient to determine the outcome of the appeal.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. An 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. But we do not evaluate prospective impact solely in geographic terms. Instead, we look for broader implications. *Matter of Dhanasar*, 26 I&N Dec. at 889.

Initially, the Petitioner submitted information about bankruptcy and its economic impact and the national job outlook for lawyers. But the issue is not the overall national importance of judicial recovery and bankruptcy law or the aggregate impact of all bankruptcy cases in the United States. Rather, the Petitioner must establish the national importance of his specific proposed endeavor.

Some of the background materials concern *individual* bankruptcy (which record materials call "Chapter 7 or Chapter 13 bankruptcy") rather than "Chapter 11" *business* bankruptcy. Because the Petitioner specified that he intends to provide services to businesses, he has not shown the relevance of the information about individual bankruptcy.

The Petitioner also submitted evidence about local lawyer shortages in some rural areas. The Petitioner resides in a suburb of [redacted] Florida, and the "Personal Plan" submitted with the petition did not indicate any intention to practice law in a rural area. The Petitioner did not explain how his employment would have a significant effect on a shortage of lawyers in his specialty.

In the RFE, the Director stated that the Petitioner must establish the importance of his specific endeavor, rather than "the importance of the field, industry, or profession in which [he] will work." In response, the Petitioner stated that his "work has palpable broader implications, as its results are widely disseminated to other professionals in the legal market. Indeed, by serving as a long-standing successful accountant [sic], [the Petitioner] assured his work would be noticed." The Petitioner did not elaborate, and he is not an accountant.

The Petitioner also stated that "the broad implication of Petitioner's work . . . certainly sets him apart from ordinary Lawyers." Rather than elaborate on this point, the Petitioner discussed his credentials and experience, stating, for instance, that he is a "Multidisciplinary Team Coordinator, with great experience and motivation to lead groups of professionals of different expertise," and that he has "Strong experience with the elaboration of Strategic Planning and Management and Business Plans, mainly directed to new enterprises and companies in crisis." The Petitioner did not explain how these details establish "palpable broader implications" as he claimed.

As noted above, the response to the RFE included a business plan for a "management consulting" company that focuses on "advisory services and assistance to small and medium-sized companies considering filing for Chapter 11 bankruptcy." The business plan indicates that the Petitioner's "Company will aid small and medium-sized companies throughout the U.S.," but this broad statement conflicts with the business plan's specific assertion that "[t]he Company's expansion plans include expanding its service availability to" 11 counties in central and southern Florida during the first four years of operations, and "[redacted] California in Year 5."

The business plan describes the Petitioner's work for some of his past clients, but does not explain the broader benefit. The business plan cites general statistics about small and medium-sized businesses in the United States, but this information does not document the likely impact of the Petitioner's proposed endeavor.

In terms of job creation, the business plan cites "national job multipliers published by the Econom[ic] Policy Institute" (EPI), indicating that "100 direct jobs in management of companies and enterprises . . . generate a total of 283.1 indirect jobs." Based on these figures, the business plan states: "Since [the Petitioner's company] will create 21 direct jobs by the end of Year 5, the total indirect jobs . . . would reach 59 in the same period."

Separately from the EPI figures, the business plan indicates that the Regional Input-Output Modeling System (RIMS II) multipliers for "Management Consulting Services in Florida" project "a final-demand impact in employment, equivalent to 409 jobs in Year 5." The Petitioner did not address or explain the significant discrepancy between the EPI and RIMS II figures. Also, according to the business plan, all employees except the Petitioner would be part-time. The Petitioner did not show that the multipliers are the same for part-time and full-time jobs.

We note that the RIMS II figures pertain to "management consulting services," while the EPI data relate to "management of companies." Therefore, the two sets of data appear to relate to related but distinct undertakings, neither of which appears to closely match the Petitioner's initial claim that he intends to work as a "lawyer." Even then, the EPI and RIMS II figures apply to broad categories of business, rather than specifically to the Petitioner's proposed endeavor. General statistics do not show why the Petitioner's proposed endeavor qualifies him for an exemption from the statutory job offer requirement that ordinarily applies to his intended occupation. As the Director stated in the RFE: "In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead USCIS must focus on the 'the specific endeavor that the foreign national proposes to undertake.' *See Dhanasar*, 26 I&N Dec. at 889."

The business plan cites the Petitioner's "willingness to transfer and disseminate his skills and knowledge to the U.S. market," but provides no specific details to establish the national importance of the Petitioner's intention to share his knowledge beyond training a small number of part-time employees. Also, the business plan also indicates that the Petitioner's company "will be committed to hiring highly skilled individuals with several years of industry-relevant experience," rather than individuals who would need to rely on the Petitioner to learn the necessary skills.

Separate from the business plan, the Petitioner stated that he "also proposes to focus his activity in the U.S. by advising companies conducting cross-border deals or planning to conduct cross-border activities in Brazil." As noted above, this claim did not appear in the Petitioner's original description of his proposed endeavor, or in the business plan. The Petitioner provided statistics about the Brazilian economy and the aggregate economic impact of international trade, but this information does not show that the Petitioner's proposed endeavor, specifically, will have broader implications beyond helping individual clients. Individuals involved with international trade are not statutorily exempt from the job offer requirement, and therefore a stated intention to participate in such trade is not sufficient to establish eligibility for the national interest waiver.

The Director denied the petition, stating: "the petitioner has not shown his proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients to impact the industry or field more broadly." The Director also concluded that the Petitioner had not shown that the proposed endeavor would have significant economic impact. The Director concluded that the Petitioner had satisfied the second *Dhanasar* prong, but not the third.

On appeal, the Petitioner repeats prior claims that do not establish the "broader implications" contemplated in *Matter of Dhanasar*, 26 I&N Dec. at 889. For example, the Petitioner discusses the overall importance of small businesses, but does not show how his proposed endeavor would have a significant impact beyond his company's clients. The Petitioner also states that he "will influence his peers in promoting cross-border transactions between Brazil and the U.S.," but offers few details beyond the general claim that "cross-border transactions . . . present unique legal issues." The Petitioner has provided sometimes conflicting information about his proposed endeavor, but he has not provided sufficient evidence to show that the proposed endeavor warrants the special benefit of a national interest waiver.

The Petitioner has established that providing services to financially troubled companies benefits those companies, but he has not shown that his specific proposed endeavor would have a sufficient impact, economically or otherwise, to establish national importance under *Dhanasar*.

In light of the above conclusions, the Petitioner has not met his burden of proof to show that his proposed endeavor satisfies the first prong of the *Dhanasar* national interest test. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.[3]

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).