U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23071280

Date: FEB. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial analyst, 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that although the record established that the Petitioner qualified for classification as a member of the professions holding an advanced degree, he 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.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, 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).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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.[3]

II. ANALYSIS

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also determined that the Petitioner had established that the proposed endeavor met the substantial merit portion of the first prong set forth in the *Dhanasar* analytical framework. However, for the reasons discussed below, the Petitioner has not established the national importance of his proposed endeavor.

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.

Initially, the Petitioner stated that he intends to continue using his expertise and knowledge in the field of real estate finance by working as a financial analyst in the United States. He indicated that he was currently employed as a financial accountant by [redacted] a company that sells real estate and brokers real estate transactions.

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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

The Petitioner stated that his proposed endeavor would potentially impact the United States in the following ways:

- Identify investment opportunities and establishing relationships with new clients abroad, in order to facilitate cross-border transactions between the U.S. and foreign investors;
- Provide financial guidance to U.S. companies and private individuals while also creating new jobs through my endeavors;
- Attract foreign direct investment into the United States;
- Conduct risk analysis, monitor market trends while also helping clients make smart investment decisions; and
- Apply my expert advice and analysis in order to increase the financial profits of U.S. companies and private individuals.

The Petitioner also supplemented the record with a copy of his job offer from [redacted], [redacted],[4] articles and reports discussing the occupation of financial analyst, copies of industry reports pertaining to the real estate market, articles discussing the economic impact of immigrant entrepreneurs, and testimonial letters from former employers.

In a request for evidence (RFE), the Director noted that the Petitioner had not demonstrated the national importance of his proposed endeavor. Specifically, the Director found that the Petitioner's statements, as well as the supporting letters and industry reports, were insufficient to demonstrate that his proposed endeavor working as a financial analyst in the real estate industry would have significant potential to employ U.S. workers or show that it has other substantial positive economic effects, particularly in economically depressed areas.

In response, the Petitioner provided an updated statement indicating he intended to continue working as a financial analyst as well as a business developer, providing land acquisition, residential analysis and market feasibility services to [redacted] and other clients. The Petitioner further claimed that he would promote this endeavor through [redacted], a real estate investment company he cofounded in [redacted] 2020.

The Petitioner submitted a detailed business plan, indicating that through his new company he will conduct feasibility analysis for the land development process, and raise capital based on the numbers generated from the analysis. The business plan also indicated that the company would create 40 direct jobs and 200 indirect jobs in the United States, and that the company's ultimate goal was to have "US$500.000.000 in assets under management by 2031 or sooner."

In the decision denying the petition, the Director concluded the record did not establish that the proposed endeavor has national importance, observing that the Petitioner did not offer sufficient evidence to demonstrate that that his business stands to impact the regional or national population at a level consistent with having national importance. The Director also concluded that the Petitioner

[4] We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

did not demonstrate that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects.

On appeal, the Petitioner contends that he has demonstrated the national importance of his proposed endeavor under the preponderance of evidence standard, arguing that the Director focused more on the Petitioner's company than "emphasizing and analyzing his preparation, expertise, and experiences as a financial and real estate specialist." With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id*. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

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 foreign national proposes to undertake." *See Dhanasar*, 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.

Preliminarily, we note that the Petitioner established his new company in [redacted] 2020, nearly two years after he filed the petition. When he first filed the petition, the Petitioner did not indicate that he would establish his own business. Rather, as discussed above, he stated an intention to continue his work as a financial analyst while employed by [redacted] At the time of filing, the Petitioner provided his job offer with [redacted] and claimed that he would "apply [his] expert advice and analysis in order to increase the financial profits of U.S. companies and private individuals.

A petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). 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). Here, when the Director asked the Petitioner for more details about his proposed endeavor in the RFE, the Petitioner responded by significantly changing the endeavor, rather than establish the national importance of the proposed endeavor as described at the time of filing. The Petitioner's establishment of a new company and plan to perform services as a CEO for this entity formed after the filing date cannot retroactively establish eligibility.

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. Here, we conclude the record does not show that the Petitioner's proposed endeavor, as initially described, stands to sufficiently extend beyond his employer and its clientele to impact the real estate industry or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the particular work he proposes to undertake offers original

innovations that contribute to advancements in his industry or otherwise has broader implications for his field. In addition, he has not sufficiently demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. While the Petitioner's initial statements reflect his intention to provide real estate financial advice and expertise, 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. Moreover, subsequent material changes to the proposed endeavor cannot retroactively establish eligibility at the time of filing, and the record contains conflicting information about the basic nature of the proposed endeavor.

Although the Petitioner provided information and statistics regarding such matters as the housing market and real estate development industry,[5] 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." *See Dhanasar*, 26 I&N Dec. at 889.

In addition, the Petitioner cites to his expertise and record of success in previous projects. His education and past experience, however, are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the Petitioner has demonstrated the national importance of his proposed work.

For all these reasons, the Petitioner's proposed work does not satisfy the "national importance" element of the first prong of the *Dhanasar* framework. 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 conclude that he has not demonstrate his eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[5] While we may not discuss every piece of evidence submitted, we have reviewed and considered the record in its entirety.