U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23671500

Date: JAN. 5, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, who has worked in finance and other fields, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts, or business, and 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 the record established the Petitioner's eligibility for classification as an individual of exceptional ability, but not 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

A petitioner seeking a national interest waiver 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. This classification ordinarily requires that the individual's services be sought by a U.S. employer. Section 203(b)(2)(A) of the Act. But U.S. Citizenship and Immigration Services (USCIS) may waive the job offer requirement if the petitioner shows the waiver to be in the national interest. Section 203(b)(2)(B)(i) of the Act.

There is no statutory or regulatory definition of the term "national interest." The precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), established a framework for adjudicating national interest waiver petitions. Under this framework, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the individual's proposed endeavor has both substantial merit and national importance; (2) that the individual 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 labor certification.[1]

The first prong, regarding substantial merit and national importance, focuses on the individual's specific proposed endeavor. The endeavor may show this merit 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.[2]

II. ANALYSIS

The Director determined that the Petitioner qualifies as an individual of exceptional ability. 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. The Director determined that the Petitioner had not satisfied any of the three prongs of the *Dhanasar* framework.

In his native Brazil, the Petitioner served as the regional controller of "a company that operates [fast food] franchises" from 1991 to 2004; corporate controller and commercial manager of a real estate development company from 2004 to 2008; and corporate controller for a refrigeration company for about three months in 2009. In 2012, he "founded . . . a real estate brokerage firm" and served as its general director until he entered the United States in May 2019 as the F-2 spouse of an F-1 nonimmigrant student.

The Petitioner's initial description of the proposed endeavor is vague and general, providing few details beyond his intention to continue working as a treasurer and controller for unidentified

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

"companies in various industries," where he would "help[] companies plan, direct, and coordinate their financial targets," and also "seize new investment and market opportunities abroad." The plural references to "companies" appears to indicate an intent to work short-term or simultaneously for a succession of companies, rather than for a single employer. The burden is on the Petitioner to demonstrate that serial employment of this nature would have national importance, rather than temporarily benefiting a small number of individual employers. The Petitioner asserted that his "plan is of national importance to the U.S. because there is a high demand for professionals in [his] field." Many businesses rely on, and benefit from, their own financial officials, but this localized benefit does not address how the Petitioner's work would have national importance as a corporate controller or treasurer. The Petitioner stated that the Bureau of Labor Statistics anticipates "around 108,600 new jobs" for "finance professionals" by 2028, but he did not explain how his work in the field would "help fill this demand" at a level indicating national importance. The Petitioner also did not explain why this claimed shortage would justify waiving labor certification, which exists to address such shortages.

In an advisory letter prepared to support the petition, a professor at the City University of New York stated: "U.S. companies doing business or planning to do business in Brazil would benefit from the expertise and skills of a Business and Financial manager, such as [the Petitioner] with an extensive knowledge of the Business Environment and regulatory landscape in Brazil." While the Petitioner's expertise could benefit his employer, the writer did not explain how this advantage has national importance. Aggregate data about the entire economy of Brazil do not establish that the Petitioner's proposed endeavor has national importance for the United States, because his work would not encompass *all* businesses in either the United States or Brazil. For the same reason, general background information about the Brazilian economy and the role of financial controllers has limited value relative to the Petitioner's specific proposed endeavor.

The overall importance of a given occupation does not necessarily lend national importance to individual workers in that occupation. A petitioner must show that the benefit from the proposed endeavor will significantly extend beyond the individual's employer or customers to impact the industry or field more broadly at a level indicating national importance. For example, in *Matter of 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 Director issued a request for evidence (RFE), stating that the Petitioner had not shown that the proposed endeavor "has a broader impact upon the field of finance." In response, the Petitioner stated that he "plans to continue his career . . . as a Treasurer and Controller in the field of Finance," but he also submitted evidence relating to two unrelated business ventures. The evidence shows that the Petitioner established a business that "specializes in offering professional wallpaper sales and installation." The Petitioner asserted that the business is of national importance because he intends to expand the company, and it is located in a densely populated area near an airport, "which allows [the Petitioner] . . . to travel to other states and countries to serve clients located in other regions." An accompanying business plan describes plans for establishing a franchise.

The business plan for the wallpaper business refers to the Petitioner as a financial professional and also a realtor. The Petitioner submitted a copy of his then-current Florida license as a real estate sales associate. The Petitioner did not explain how serving as a real estate sales associate, and as the chief

executive officer of his own wallpaper company, would "continue his career . . . as a Treasurer and Controller."

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, the Petitioner has materially changed his petition to focus on a business and industry that played no part in the initial filing.

When he filed the petition, the Petitioner stated his intention "to provide professional treasury and controllership services to U.S. based companies." Describing his employment history, the Petitioner originally stated: "In my most recent endeavor, I founded . . . a real estate brokerage firm in Brazil in 2012." The new evidence in the RFE response shows that the brokerage firm was not his "most recent endeavor" at the time of filing. He organized the wallpaper company in September 2019, about six weeks before he filed the petition in October. The Petitioner has not explained why his initial description of the proposed endeavor did not mention his newly-formed company. Also, his Florida real estate license has no apparent connection to the original proposed endeavor regarding employment as a treasurer or controller.

The RFE response shows that the Petitioner has pursued divergent business activities in the United States, but the evidence does not show that he has sought or secured employment as a treasurer or controller as he initially indicated when describing the proposed endeavor. The RFE response includes three documents described as "Letters of Intent to Hire," but all three letters are from clients of the Petitioner's wallpaper company. The letters refer to decoration projects, and do not indicate that the companies have hired the Petitioner as a treasurer or controller, or that they intend to do so.

The Director denied the petition, concluding that the Petitioner had not shown that he meets any of the three prongs of the *Dhanasar* framework. Regarding the first prong, the Director concluded that the Petitioner had not shown the importance of his proposed endeavor "to sufficiently extend beyond an organization or clients to impact the industry or field more broadly."

On appeal, the Petitioner asserts that he has documented his "importance in the finance industry" and submitted a business plan containing "concrete projections of the benefits he may offer to the U.S." But, as outlined above, the business plan concerns a wallpaper company, not "the finance industry."

To qualify for the national interest waiver under *Dhanasar*, a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In this case, the Petitioner has not identified a single, consistent, and cohesive proposed endeavor. Instead, he has established a wallpaper company and secured a license to sell real estate. He has claimed that he seeks employment as a treasurer or controller, but his evidence does not corroborate that claim.

The inconsistency in the proposed endeavor affects the Petitioner's arguments on appeal. The Petitioner states, for instance, that his "proposed endeavor will result in the potential employment of U.S. workers, because as his served companies/clients increase sales within the nation . . . more workers within the supply chain will be needed." But the appeal includes another copy of the business plan for the wallpaper company, and another copy of his real estate sales license. The Petitioner has

not explained how either of these documented business ventures will result in higher employment at his customers' businesses, or how they relate to the proposed endeavor as initially described.

The Petitioner's statement on appeal moves back and forth between his wallpaper company and his unsubstantiated assertions about working in finance. For example, he states: "I intend . . . to work as a Treasurer Controller in the Financial field and contribute to the U.S. economy, and its societal welfare, through the development and expansion of my U.S. [wallpaper] company." One paragraph in his latest statement begins with the assertion that "finance is one of the most important aspects of any business" and ends with the statement that "offering quality professional wallpaper sales and installation services and products . . . is certainly in the national interest of the United States." The Petitioner's statement on appeal describes two different and apparently unrelated activities.

The separate appellate brief relies largely on general statements, such as the assertion that the proposed endeavor "will produce significant national benefits, due to the ripple effects of [the Petitioner's] professional activities." But the lack of detail in such broad statements is of particular concern when the Petitioner has provided conflicting descriptions of the proposed endeavor. The brief also indicates that the "Petitioner's proposed endeavor . . . is particularly important in present times, where the COVID-19 pandemic has affected the production and sales goals of multiple companies in the United States." The brief does not explain how the Petitioner's concrete, documented U.S. business activity improves the ability of "multiple companies" to meet their "production and sales goals."

Because the Petitioner has provided inconsistent descriptions of his proposed endeavor in the United States, we cannot conclude that he has met his burden of proof to show that the proposed endeavor has national importance or otherwise satisfies the requirements of the *Dhanasar* framework. The first iteration of the proposed endeavor, involving employment in the United States as a treasurer or controller, is the least documented in the record. The recent business activity shown in the record is not consistent with the Petitioner's initially stated goal of securing employment as a treasurer or controller of a U.S. business.

Because the record does not establish the national importance of his proposed endeavor, the Petitioner has not demonstrated eligibility for a national interest waiver. Because this issue determines the outcome of the appeal, we reserve the arguments regarding the remaining prongs of the *Dhanasar* framework, relating to whether the Petitioner is well-positioned to advance the proposed endeavor and whether, on balance, a waiver of the job offer requirement would benefit the United States.[3]

III. CONCLUSION

Because the Petitioner has not met the required "national importance" element of the first prong of the *Dhanasar* analytical framework, we conclude as a matter of discretion that he has not established eligibility for a national interest waiver. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

[3] *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).