U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26379657

Date: JUNE 8, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, who restores automobile interiors, seeks classification as a member of the professions holding an advanced degree. *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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

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 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 only stated ground for denial is that the Petitioner has not established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner claims to have earned a bachelor's degree in 2007, and a master's degree in 2009, both in the field of industrial design. The Petitioner stated that, in Brazil, he was "employed as a researcher," "working . . . in development of new techniques in interior and exterior car restoration." The Petitioner arrived in the United States in 2017 as a B-2 nonimmigrant visitor, and changed status that same year to that of an F-1 student in order to study English at a language school in [redacted] Florida. He filed the petition in November 2019. In July 2021, after obtaining employment authorization, the Petitioner established his own business in [redacted]

The first 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.

At the time he filed the petition, the Petitioner provided few details about his proposed endeavor except to say that it would involve "[r]estoration, monitoring and improving the design of a car, bringing it to it's [sic] former glory." He added: "I have developed a new technic [sic] imaging modality which significantly reduces costs and beauty to a golden hammer." The meaning of this passage is not clear, and the Petitioner did not explain the relevance of "a new . . . imaging modality" to the field of automobile interior restoration.

In response to a request for evidence (RFE), the Petitioner submitted a business plan and other information about his newly established Florida business. The Petitioner indicated that his business would have an impact through job creation and other economic activity, such as interactions with suppliers and clients such as car dealers. The Petitioner submitted background evidence about entrepreneurship and small businesses. However, the Petitioner must establish the national importance of his specific proposed endeavor. The overall, collective importance of all U.S. small businesses does not show the national importance of the Petitioner's proposed work with his company.

The Director denied the petition, stating that the Petitioner did not submit evidence to "show that the company's staffing levels, business activity, and sales stand to provide substantial positive economic benefits to the region where it will operate (Florida) or the United States."

[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).

On appeal, the Petitioner states:

> [The Petitioner] is a respected leader among his contemporaries and within his field, and I believe he will provide his much-needed services as an entrepreneur and general and operations manager in the manufacturing industry within the United States. . . . [The Petitioner's] proposed endeavor has significant potential to employ U.S. workers and has other substantial positive economic effects, especially in economically depressed areas of the United States. He will use his experience in purchase, product, and customer service to help small and medium-sized enterprises in the U.S. improve operations and achieve better productivity and profitability levels. . . . [H]e would bring jobs to an economically depressed area of the country, where employment opportunities are few and far in between. . . . His vast experience in the field of business and entrepreneurship will significantly contribute to the nation's economy by optimizing resources, increasing productivity, reducing costs, and generating revenue.

These are general statements, for which the Petitioner cites no evidentiary support. For instance, the Petitioner does not cite any source for the assertion that his business will operate in "an economically depressed area of the country." The Petitioner does not explain how his ownership of a small automobile restoration business will significantly benefit "the manufacturing industry within the United States" or help other businesses "improve operations and achieve better productivity and profitability levels." Such claims have minimal weight without more details explaining the specific benefits, and showing how the evidence of record supports those claims.

In terms of job creation, the business plan in the record indicates that the company plans to employ six workers, including the Petitioner, at the end of its fifth year of operations. The Petitioner did not establish that this level of employment produces economic benefits to a degree consistent with the *Dhanasar* national interest test. Likewise, the Petitioner did not show that his company's purchase of raw materials and services provided to customers such as car dealerships have an economic impact beyond the local level.

For the above reasons, we agree with the Director that the Petitioner has not established the national importance of the proposed endeavor. Because the petition cannot be approved without a showing of national importance, this determination is sufficient to dismiss the appeal as a matter of discretion. Therefore, we reserve argument on the second and third *Dhanasar* prongs. *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).

The record also contains several discrepancies. For example:

- Letters submitted with the petition refer to technology seemingly more suited to astronautics than to automobile interior restoration, such as pixel detectors and "an actual space dosimeter used at ISS" (the International Space Station). The Petitioner asserted that one of the letters is from a "Top Brazilian Aerospace Company." The Petitioner did not explain how aerospace technology is relevant to his proposed endeavor of automobile interior restoration.

- One of the above-mentioned letters is from an individual who identified himself as a "Producer and Reasercher" (sic) in [redacted] Florida, with the PBS station [redacted] But [redacted] is based in California, not in Florida, and the individual did not provide supporting evidence to corroborate his claim to work for [redacted]
- The Petitioner initially stated: "I am employed as a researcher by . . . [redacted] His initial submission included a 2017 letter attributed to an official of '[redacted]' indicating that the Beneficiary worked for the company "for these last 5 years." The Petitioner's response to the RFE included a different claimed employment history, indicating that he worked as a "store and craftsman manager" for "[redacted] from 2005 to 2015, and as a contractor for '[redacted]' from 2015 to 2017. The Petitioner also submitted copies of Brazilian government documents, indicating that the Petitioner established a company named after himself in 2014, which operated under the trade name '[redacted]'"

An immigrant petition cannot properly be approved unless the petitioner shows that the facts claimed in the petition are true. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). This is particularly important because many key assertions in the record lack first-hand, documentary corroboration. For example, the Petitioner claims to have had "long-term contracts" with several automobile manufacturers in Brazil, but the record does not include copies of those contracts. Such documentation would have carried significantly more weight than after-the-fact statements from individuals who claim, without evidence, to have personal knowledge of the Petitioner's past employment. These factors would be relevant in a second prong analysis of whether the Petitioner is well positioned to advance his specific proposed endeavor. However, we need not reach a full discussion here, as the Petitioner has not established that he meets the national importance element of the first prong.

Because the record contains contradictory information about material information such as the Petitioner's employment history, and key assertions are uncorroborated by first-hand, objective evidence, we conclude that the Petitioner has not met his burden of proof to show that the material facts claimed in the petition are true, as required by section 204(b) of the Act.

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.