U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25758759

Date: MAR. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager, seeks classification as a member of the professions holding an advanced degree. 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, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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.

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

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

eligibility for EB-2 classification, USCIS may, as a matter of discretion, 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.

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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. 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 noncitizen's qualifications or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen's contributions; and whether the national interest in the noncitizen'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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan "to provide expert managerial services to U.S. companies." More specifically, the Petitioner asserted that he would "plan, direct, and coordinate the operations of public or private sector companies in the United States." The Petitioner's initial professional plan and statement did not state that he intended to found a new company and hire new employees; however, we note that it did generally state that he is "confident I will contribute and generate revenue and jobs within the United States."

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

In response to the Director's request for evidence (RFE), the Petitioner asserted, for the first time, that he is an "[e]ntrepreneur in the field of [b]usiness" and that he plans "to develop a healthcare consultancy, operations management, information technology, and data privacy services company, [redacted] in the state of Virginia." The Petitioner also submitted an undated business plan for [redacted], indicating that it would employ various workers during the first five years of operations. Publicly available information provided by the Commonwealth of Virginia's State Corporation Commission indicates that an entity known as [redacted] was not registered to conduct business in Virginia at the time the petition was filed in April 2020, nor has such an entity been registered to conduct business in Virginia as of the time of the Director's decision or the appeal filing date.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Whether the Petitioner would found a new company and hire new workers is material to the first *Dhanasar* prong because it contemplates endeavors that have broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90. Because the Petitioner asserted, for the first time, in response to the Director's RFE that he plans to found a new company and hire new workers, and because the Petitioner had not already founded such a business at the time of filing, the plan to found a new business and hire new workers presents a new set of facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Because the Petitioner's plan to found [redacted] and hire new workers cannot establish eligibility, we need not address it further.

We note, however, that the business plan presents inconsistent information about the number of employees to be hired and their annual salaries, which would reduce its credibility even if it could establish eligibility, which it cannot. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition.). For example, the business plan's schedule of new hires indicates that a total of two part-time workers would be employed in the first year of operation, and the key personnel chart indicates that the two part-time workers would be one "IT staff" and one "software engineer," both of whom would be "First Year Part time than Full time [sic]." The schedule of new hires lists a total of 217 workers throughout the first five years, including 193 full-time employees, 2 part-time employees, and 22 contractors; however, this total appears to include the two individuals both as part-time workers in the first year and as full-time workers in the second year, as if they were four individuals. This raises questions regarding the accuracy of the schedule of new hires in general. In turn, the annual salaries for various positions appear to be underestimated. For example, the business plan's key personnel chart specifically identifies the Petitioner as the "CEO," with an annual salary of $65,000; however, Part 6. Basic Information About the Proposed Employment of the Form I-140, Petition for Alien Workers, indicates that the annual wages for the proposed endeavor's position would be $100,930 per year. This inconsistency in particular raises questions

regarding the extent to which the overall business plan corresponds to the proposed endeavor initially described at the time of filing. *See id.* Therefore, even if the business plan could establish eligibility, which again it cannot, it would undermine its own reliability and sufficiency, and that of other evidence in the record. *See id.*

The Director found that the record does not establish that the proposed endeavor has national importance because "the potential prospective impact of [the Petitioner's] endeavor pointed to a single impact with his clients, rather than the nation." The Director acknowledged the Petitioner's business plan indicates that he "plans to hire 217 U.S. based employees over the next five (5) years" but the Director concluded that "nothing in the record demonstrated that his business would have such potential."

On appeal, the Petitioner asserts that the Director "did not give due regard to the pieces of evidence presented by the [Petitioner] throughout the application." Specifically, the Petitioner asserts that his prior work experience indicates his "ability to run a successful business in supporting medical providers by providing business healthcare consultancy and medical information services." The Petitioner also asserts that "[h]is work aligns with the national interests of the U.S. in improving general operations of business in the business sector."

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 [noncitizen] 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.

The Petitioner's reference on appeal to his prior work experience as a factor in the proposed endeavor's national importance is misplaced. A petitioner's work experience relates to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—but it does not relate to the first *Dhanasar* prong—whether the specific endeavor an individual proposes to undertake will have broader implications or other substantial positive economic effects. *See id.* at 888-91. In turn, the Petitioner's reference on appeal to "the national interests of the U.S. in improving general operations of business in the business sector" is misplaced. Again, 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 [noncitizen] proposes to undertake." *See id.* at 889. General assertions regarding an industry that do not address how a specific endeavor will have broader implications or other substantial positive economic effects do not establish how a proposed endeavor may have national importance. *See id.*

The record does not establish that the proposed endeavor will have national importance. For the reasons discussed above, the Petitioner's assertions made for the first time in response to the RFE, including the business plan for [redacted] present a new set of material facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Instead, the Petitioner's initial proposed endeavor

description asserted that he will "provide expert managerial services to U.S. companies," specifically by "plan[ning], direct[ing], and coordinat[ing] the operations of public or private sector companies in the United States." The proposed endeavor appears to benefit the Petitioner's employer(s) and the clients, customers, patients, etc., of the Petitioner's potential employer(s); however, the record does not establish how the Petitioner's work as a general and operations manager will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area," beyond the pre-existing possibility of the Petitioner's potential employer(s) to employ an unspecified number of U.S. workers in any particular area or generate positive economic effects. *Id.* at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.