U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26271249

Date: MAY 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an agricultural sales representative, seeks classification under the second-preference immigrant visa category for members of the professions holding advanced degrees and requests a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job-offer - and thus the need for certification from the U.S. Department of Labor (DOL) - if a waiver is "in the national interest." Section 203(b)(2)(B)(i) of the Act.

The Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified as an advanced degree professional. But the Director concluded that he did not demonstrate that the requested waiver is in the national interest. On appeal, the Petitioner contends that, in adjudicating the waiver request, the Director imposed requirements beyond those stated in regulations and case law.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we affirm the Director's finding that the Petitioner did not demonstrate the "national importance" of his proposed U.S. employment. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate their qualifications for the underlying immigrant visa category, either as an advanced degree professional or a noncitizen of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. This category generally requires a prospective U.S. employer to seek a noncitizen's services and obtain DOL certification to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, a petitioner must demonstrate that waiving these protections for U.S. workers is in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." But we have established a framework for adjudicating requests for national interest waivers. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as an advanced degree professional or noncitizen of exceptional ability, a petitioner may merit a waiver of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavor; and
- On balance, a waiver of the normal job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The Petitioner, a native and citizen of Brazil, proposes to work as an agricultural sales representative at his own U.S. company, which he formed in [redacted] 2020.[1] The company would market and export U.S. agricultural products - such as fertilizer and potatoes - to Brazil. The business would also import Brazilian agricultural products - such as coffee, lumber, ginger, and tropical fruits - to the United States.

A. Advanced Degree Professional

The Petitioner demonstrated his receipt of a foreign equivalent of a U.S. bachelor's degree in agricultural engineering and his accrual of more than five years of progressive, post-baccalaureate experience in agribusiness. We therefore affirm the Director's finding that the Petitioner qualifies for the requested immigrant visa category as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a foreign equivalent of a U.S. baccalaureate and at least five years of progressive, post-baccalaureate experience in the specialty).

B. Substantial Merit

We also agree with the Director that the Petitioner's proposed U.S. employment has substantial merit. He submitted a business plan estimating that, by his company's fifth year of operations, it would generate $5.7 million in annual revenues and employ 35 people. *See Matter of Dhanasar*, 26 I&N Dec. at 889 (stating that "[e]vidence that the endeavor has the potential to create a significant economic impact" may demonstrate substantial merit).

C. National Importance

"In determining whether the proposed endeavor has national importance, we consider its potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field,

[1] A copy of the 2021 federal income tax return of the limited liability company indicates that the Petitioner and his spouse jointly own the business.

such as those resulting from certain improved manufacturing processes or medical advances." *Id.* USCIS must focus on the nature of the proposed employment, not on its geographical scope. "An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Director found that, while the Petitioner's proposal could provide significant economic benefits to his company's clients, it would likely have little national impact. The Director recognized the Petitioner's plans to expand the company's operations from Florida to Colorado in its third business year and to Minnesota in its fifth business year. But, even so, the Director found that the Petitioner's proposed activities do not rise to the level of national importance.

On appeal, the Petitioner asserts that his endeavor would have "broader implications within his field" and "reach the level of substantial economic effects contemplated in *Dhanasar*." He contends that his company, by its fifth operational year, would not only generate 35 direct jobs - including positions for sales directors, sales managers, marketing managers, customer service professionals, and office assistants - but also 80 indirect jobs providing support and supply chain services. Drawing on his 30 years of agribusiness experience, the Petitioner also stated that he would personally train his employees. He said:

> In this sense, [the] Petitioner will contribute to transferring knowledge to Americans [who] want to work in his area of expertise. Thus, the evidence clearly demonstrates that [the] Petitioner's Proposed Endeavor would have implications beyond his clients at a level commensurate with national importance.

He also asserts the national importance of his proposed U.S. employment "because it will increase sales and visibility of American agricultural products and improve the relationship between Brazil and the U.S. for the import and export of agricultural products."

Despite the Petitioner's contentions, the record does not sufficiently demonstrate that his proposed activities would rise to the level of national importance. The Petitioner does not specify whether his company has begun the proposed importing and exporting yet. But the copy of the company's 2021 federal income tax return reflects revenues of only about $80,000 and no wages paid, below the Petitioner's first-year estimates of $750,000 in revenues and seven employees. Also, the record does not indicate that the Petitioner has ever operated a business of his own. Thus, based on the 2021 tax return, his business plans and projections might be over-optimistic.

We acknowledge that the Petitioner's proposal could create U.S. jobs and boost agricultural trade between the United States and Brazil. But the record does not establish the national significance of these potential benefits. The Petitioner cites statistics that the United States imported $3.3 billion in Brazilian agricultural products in 2019 and, as of 2016, exported $872 million in U.S. agricultural products to Brazil. The projected $5.7 million in revenues that the Petitioner's company would generate in five years would not appear to significantly boost these trade levels. Nor does the Petitioner demonstrate, for instance, that his business would advance the agribusiness industry or create jobs in an economically depressed area of the United States.

The record lacks sufficient evidence that the Petitioner's specific work would have national implications. *See Matter of Dhanasar*, 26 I&N Dec. at 889 (stating that analysis of national importance "focuses on the specific endeavor that the foreign national proposes to undertake"). We will therefore affirm the petition's denial.

Our affirmance resolves the appeal. As the Petitioner has not demonstrated the national importance of his proposed U.S. employment, we need not consider the petition's other denial grounds and will reserve them for future consideration, if needed. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976). ("[A]gencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.")

III. CONCLUSION

The Petitioner demonstrated his qualifications as an advanced degree professional and that his proposed U.S. employment has substantial merit. The record, however, does not establish the national importance of his endeavor.

ORDER: The appeal is dismissed.