U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28457295

Date: SEP. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial advisor, 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, 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 a member of the professions holding an advanced degree 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). *Dhanasar* states that, 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 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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 in a "professional plan and statement" as a plan "to continue my career in the United States as an [e]ntrepreneur in the financial sector, using my expertise in finance, investments, real estate, and strategic planning, to drive profitable business opportunities for U.S. companies." In the same professional plan and statement, the Petitioner asserted that he works as a partner for two real estate businesses and one investment management business, all located in Brazil. On a Department of Labor ETA Form 750 Part B, Statement of Qualifications of Alien, the Petitioner indicated that he works 40 hours per week for each of his three Brazilian companies. However, the professional plan and statement did not provide specific information about the Petitioner's proposed endeavor to work in the United States or how many of the 48 remaining hours per week—during which he would not be working for his three Brazilian companies—he planned devote to his proposed endeavor. Nevertheless, the Petitioner generally asserted the following:

> My specific endeavor will potentially impact the U.S. in the following ways:
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> - U.S. job creation and tax revenue;
> - Designing, implementing, and managing all activities in the financial, strategic, planning, business development, and investment segments of a business;
> - Serving rural and economically underserved communities with business activities in the real estate industry to better develop these areas, generate revenue, and promote the creation of new jobs and improved housing conditions;
> - Aiding and proving [sic] consultancy in business areas, specializing in financial management, strategic planning, and the formation of strategic partnerships;
> - Through my company I will provide financial training and education to improve financial literacy in underserved and rural communities, while also successfully addressing the growing skills gap in the financial industry to promote job creation in underserved, and rural communities in the U.S.; and

- Network with industry peers, competitors, and prospective clients to continuously develop new business opportunities.

We acknowledge that the Petitioner initially referred to "my company," albeit without specifying his company's name, when he founded it, and what its particular operations entail.

In response to the Director's request for evidence (RFE), the Petitioner submitted a new "definitive statement," in which he provided more information about his proposed endeavor. In the "definitive statement," the Petitioner described his proposed endeavor as a plan "to continue using my expertise and knowledge, gained through more than twenty (20) years of experience and services in the field of financial advisory and entrepreneurship, to lead [redacted] a property management service provider for short-term rentals in the entire state of Florida." The Petitioner elaborated that his company "will manage luxury homes or apartments for the owners of properties located in popular tourist areas in Florida," providing services including "cleaning and general property maintenance work, along with marketing services, such as publicizing rental properties, by using a combination of promotional and advertising tools to maximize occupancy and rental rates."

The Petitioner also submitted a business plan for [redacted] dated December 2022 in response to the Director's RFE. The business plan states that the Petitioner "will serve as the [c]ompany's [c]ommercial [d]irector and will be responsible for overseeing the overall performance of the business." The business plan also addresses the Petitioner's three Brazilian companies, for each of which he works 40 hours per week, in addition to a fifth concurrent job, "working as a [b]usiness [p]artner of [redacted] a real estate business located in [redacted] Florida." The Petitioner does not clarify in the RFE response how many of the 48 remaining hours per week—during which he would not be working for his three Brazilian companies—he works as a business partner of [redacted] and how many of those remaining hours he planned devote to his proposed endeavor. However, the Petitioner's statements in the record that he holds five concurrent jobs, at least three for which he works 40 hours per week, cast significant doubt on whether his employment in connection with the proposed endeavor would be on a full-time basis. (Conversely, the business plan's indication that the Petitioner holds five concurrent jobs casts doubt on his statement on the ETA Form 750 Part B that he works 40 hours per week for at least three of those jobs.) 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Therefore, the doubt created by the assertions regarding the Petitioner's numerous, concurrent, full-time positions undermines the reliability and sufficiency of the information in the record in general.

The business plan does not appear to correspond to the proposed endeavor as described at the time of filing. On the Form I-140, Immigrant Petition for Alien Workers, Part 6. Basic Information About the Proposed Employment, the Petitioner indicated that his job title would be "personal fin advis/entrepreneur," and that his annual wages would be $88,890. However, the business plan states that the Petitioner's payroll expenses as the commercial director of his short-term rental property management company would be "$0" in each of the first five years of operations, receiving an unspecified "part of the [c]ompany's net profits in lieu of a salary." Although the business plan does not elaborate on the portion of the net profits the Petitioner would receive in lieu of a salary, it states that the total net profit for each of the first five years would be $31,179, $45,020, $56,836, $69,388, and $78,223. Therefore, even if the Petitioner received 100% of the net profits in each of the first five

years of operations, his income from working as [redacted] commercial director would not match the annual wages of $88,890 he provided on the Form I-140 in any of those years.

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).

The extent of the inconsistency between information the Petitioner provided at the time of filing about what his proposed employment's income would be as compared to what his business plan, submitted for the first time in response to the Director's RFE, ambiguously described his income to be 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 business plan presents a new set of facts that cannot establish eligibility and, moreover, because it does not appear to correspond to the proposed endeavor described at the time of filing, we need not address it further. *See id.* Relatedly, because the business plan for [redacted] does not appear to correspond to the proposed endeavor, it casts doubt on the assertions in the "definitive statement" the Petitioner submitted in response to the Director's RFE regarding [redacted] reducing its reliability and sufficiency. *See Matter of Ho*, 19 I&N Dec. at 591.

The Director addressed other information in the record, such as information regarding the company's actual earnings in the first year of operations, that supports the conclusion that "the business plan is not probative or credible in showing the proposed endeavor's potential prospective impact would rise to the level of national importance." The Director further concluded that "the record does not reflect the benefits to the U.S. regional or national economy resulting from [the Petitioner's] work would reach the level of substantial positive economic effects contemplated by *Dhanasar*." The Director further observed that generalized information regarding industry demand and importance "does not, by itself, establish that the specific proposed endeavor (which would be localized to the companies or clients for whom the [P]etitioner would provide his services) stands to impact the broader field or otherwise has implications rising to the level of national importance," although the Director acknowledged that "his proposed endeavor is of substantial merit." The Director further concluded that the record did not satisfy the second and third *Dhanasar* prongs. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner asserts that, through his work as commercial director for [redacted] he "will inform, evaluate, and guide highly educated and well-positioned professionals from all over the world to the U.S., which will certainly benefit the U.S., directly and indirectly, by attracting clients, investments, and business opportunities, which will contribute to numerous sectors of national interest." The Petitioner also summarizes his prior work experience and achievements, and he references generalized "industry reports and articles" in the record, which he asserts establish that his proposed endeavor will have national importance.

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.

We first note that the Petitioner's discussion of his prior work experience and achievements in the context of whether his proposed endeavor may have national importance is misplaced. Although an individual's prior work experience and achievements are material to the second *Dhanasar* prong—whether an individual is well-positioned to advance a proposed endeavor—they are immaterial to the first *Dhanasar* prong—whether a particular proposed endeavor has both substantial merit and national importance. *See id.* at 888-91. Similarly, the Petitioner's references on appeal to generalized "industry reports and articles" in the record is misplaced. As noted above, 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. None of the industry reports and articles address the Petitioner, his proposed endeavor, and how it may have national importance; therefore, they are immaterial to the first *Dhanasar* prong and we need not address them further. *See id.*

Next, the Petitioner's focus on appeal on his business plan, regarding his work as commercial director for [redacted] is misplaced. As noted above, the business plan presents a new set of facts that cannot establish eligibility and, moreover, does not appear to correspond to the proposed endeavor described at the time of filing. Similar to the Director's conclusion that "the business plan is not probative or credible in showing the proposed endeavor's potential prospective impact would rise to the level of national importance," we need not address the business plan for [redacted] submitted for the first time in response to the Director's RFE, or how it may establish the proposed endeavor has national importance, for the reasons addressed above. *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. And, as noted above, we need not address the Petitioner's assertions regarding [redacted] in his "definitive statement" because of the doubt cast on its reliability and sufficiency. *See Matter of Ho*, 19 I&N Dec. at 591.

Instead, turning to the Petitioner's description of the proposed endeavor at the time of filing, his general reference to "my company" and its goal "to drive profitable business opportunities for U.S. companies" appears to benefit the Petitioner's company and its clients. However, the information in the record that may establish eligibility does not elaborate on how generally driving profitable business opportunities for the Petitioner's clients 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 . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. We note that the Petitioner's description of the proposed endeavor at the time of filing asserts that it will "serv[e] rural and economically underserved communities with business activities in the real estate industry to better develop these areas, generate revenue, and promote the creation of new jobs

and improved housing conditions." However, the record—that may establish eligibility—does not clarify which particular communities will be served, how the proposed endeavor will serve those communities, the nature and scope of the generalized "business activities," the developments that will be completed, the extent of the revenue that will be generated, further details about the generalized "new jobs" whose creation the endeavor will promote, and similar details about the proposed endeavor that may support a conclusion that it may have "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *See id.*

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.