U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23071613

Date: DEC. 28, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a chief of executive interim management, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, as well as 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined the Petitioner qualifies for the underlying classification and is well positioned to advance the proposed endeavor. Nevertheless, the Director denied the petition, concluding that the evidence did not establish the national importance of the proposed endeavor or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a 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 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.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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). In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined the Petitioner qualifies for the underlying EB-2 classification. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence, we have reviewed and considered each one.

The Petitioner stated that, as the founder and managing partner of the [redacted] and its Florida-based affiliate, [redacted] he will provide consulting services in the areas of business, management, and investments. Through [redacted] he will also help companies, entrepreneurs, and investors start, expand, and/or improve businesses and investments in Brazil and the United States. The Petitioner explained that executive interim management (EIM) helps companies properly manage their current operations through critical transitions, such as an executive's absence, starting new operations, and overcoming crises. His company vets and selects experienced executives in multiple fields to temporarily work for other companies during such transitions or on a project management basis. As such, he offers his client companies the opportunity to temporarily gap fill an executive management position or outsource a specific project's execution. The Petitioner explained that the main purpose of expanding the [redacted] into the United States "is to enable medium and large Brazilian companies with international potential to make investments and succeed in their efforts to enter the US market, thus creating jobs and contributing to the country's economic growth."

In response to the Director's request for evidence (RFE), the Petitioner further clarified that his proposed endeavor of providing EIM services "is specifically focused on bringing Foreign Direct Investment (FDI) to the United States, and for the United States' benefit" and that as chief of EIM, he proposes to attract and maintain Brazilian FDI in the United States. He stated that providing EIM services "can be an instrumental resource for the enabling and maintenance of [FDI], as well as the creation and protection of jobs . . . ." The Petitioner further asserted that "by helping foreign (Brazilian or otherwise) companies to successfully invest and develop their businesses" in the United States through EIM services, he will bring benefits that "are mutual between foreign nations and the U.S. host." The benefits specific to the United States include:

- "massive economic benefit" from FDI;

- job creation and preservation;
- providing business development and consulting services to "domestic U.S. companies;" and
- potentially increasing U.S. exports to Brazil and other Latin American countries.

While acknowledging the importance of EIM and FDI, the Director explained that the Petitioner had not established the national importance of his specific proposed endeavor. When determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See id. at 889. Much of the Petitioner's evidence in support of the proposed endeavor's national importance, including articles and reports, as well as the statistics about FDI, exports, imports, and EIM, relate to how these industries are important. However, such evidence does not necessarily establish the national importance of the specific proposed endeavor.

To establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. Evidence, such as the advisory opinion from [redacted] of [redacted] University and the reference letters from the Petitioner's professional colleagues and acquaintances, contain details of the results the Petitioner achieved for individual client companies. However, such evidence does not substantiate a finding that the proposed endeavor stands to impact the FDI or EIM fields, or the nation as a whole. Rather, this evidence supports a finding that the Petitioner provided benefits to client companies that contracted him for his services. Although the record contains statements that the Petitioner's methods are "unique" and "novel," as well as that he "pioneered" certain business concepts and applied a "special methodology," the record does not substantiate these claims. The Petitioner acknowledges the existence of competitors; however, he has not demonstrated how his proposed endeavor services differ from other EIM service providers. As such, it is not apparent that his proposed endeavor has broader implications within a particular field.

A main reason the Petitioner claims his proposed endeavor has national importance is that he will attract and maintain FDI in the United States; however, the Petitioner has not sufficiently explained the connection between his EIM services and FDI. For instance, the Petitioner stated that he will recruit interim managers who are capable of carrying out FDI projects, which implies that not all EIM services and projects involve FDI. Although the Petitioner emphasized that he will prioritize and focus on FDI projects within his EIM clients, he has not explained how he will do this. Among the consulting, project management, and business development services his company purports to provide, we cannot determine which of the listed services involve FDI. Further, the business plan does not sufficiently address which percentage of the Petitioner's clients or projects will involve FDI, as opposed to those involving other services on the Petitioner's list. The Petitioner appears to assume that any foreign business expanding to or operating in the United States necessarily involves FDI; however, the record does not substantiate such an assumption.

The record contains examples of the Petitioner's past successes and the results he achieved for his clients, including [redacted], [redacted], [redacted], and [redacted]. The Petitioner has not substantiated how these companies or projects involved FDI in the United States, and the connection, if any, the FDI had with the EIM services he provided. While we acknowledge these successes, the record does not show that benefits to the U.S. regional or national

economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. See id. at 890. The Petitioner stated that he preserved $40 million in Brazilian FDI in a U.S. company, but he has not explained which Brazilian entity invested $40 million and which U.S. company received it, nor has he explained the context, use, and consequences of the $40 million such that we could determine how it constitutes an investment. Even if the record substantiated a finding that the project management or EIM services the Petitioner provided "saved" a company and allowed it to retain $40 million, this would not necessarily establish how the company and its $40 million constituted FDI. While the Petitioner may offer valuable EIM services, we conclude that FDI projects and FDI clients appear to be incidental to the overall services the Petitioner offers.

Based upon statements in the business plan, the proposed endeavor does not appear to operate on a scale that rises to the level of national importance. Although the proposed endeavor may benefit the client companies that engage the Petitioner for his services, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance. The Petitioner emphasized the importance of FDI, especially during the COVID-19 pandemic when FDI has dropped, resulting in a contraction of businesses and economies globally. While we acknowledge these economic effects, the Petitioner initially filed his petition prior to the COVID-19 pandemic and as such, cannot rely on it to serve as a basis for the national importance of the proposed endeavor at the time of filing.

On appeal, the Petitioner relies upon the evidence and arguments already submitted. He reiterates the importance of industry or profession, his expertise, and his role within his company; however, these factors do not sufficiently establish the national importance of the proposed endeavor. The appellate brief refers our attention to the articles and reports about EIM and FDI to evidence the national importance of the Petitioner's profession and services; however, none of the articles discuss the Petitioner's specific U.S. company or his specific proposed endeavor. The Petitioner likewise reiterates his professional experience and abilities. While important, the Petitioner's expertise acquired through his employment relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. Finally, the record demonstrates the importance of the Petitioner's role within his company and for the companies he served in the past; however, this does not sufficiently establish the national importance of the proposed endeavor.

The Petitioner reminds us that overhauling the structure and operations of FDI businesses plays a key role in determining a business' ability to operate and succeed in the United States. While this may be true, the record does not reflect that the Petitioner would provide interim management exclusively to companies involved in FDI in the United States. Even if the record had demonstrated this, it would not establish how his proposed endeavor operates on a scale that rises to the level of national importance.

Counsel stresses that the Petitioner submitted over 350 pages of evidence and has certainly met the preponderance of the evidence standard. Eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. Matter of Chawathe, 25 I&N Dec. at 376 (citing Matter of E-M-, 20 I&N Dec. 77, 80 (Comm'r 1989)). It is always a petitioner's responsibility to ensure the

record demonstrates how they qualify for a national interest waiver. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met his burden here.

III. CONCLUSION

The documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any remaining arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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).

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.